

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ERIKA RIVERA,)	No. CV-F-04-6771 REC SMS
)	
Plaintiff,)	ORDER GRANTING IN PART AND
)	DENYING IN PART DEFENDANTS'
vs.)	MOTION TO DISMISS.
)	
CITY OF MERCED, et al.,)	
)	
Defendants.)	
)	
)	

On March 28, 2005, the Court heard Defendants' motion to dismiss. Upon due consideration of the written and oral arguments and the record herein, the Court GRANTS IN PART AND DENIES IN PART the motion as set forth below.

I. Factual Background

On the evening of April 15, 2004, Merced Police Department Officer Stephan Gray was killed. Plaintiff Erika Rivera's son was the primary suspect. On April 17, 2004, Plaintiff was arrested pursuant to a warrant for suspected violation of section 32 California Penal Code, being an accessory by aiding her son and hindering the law enforcement investigation.

Prior to arresting Plaintiff, officers came to Plaintiff's

1 house with weapons drawn. Plaintiff, her sixteen year old
2 daughter and eighteen year old son were required to lie on the
3 ground as officers pointed service pistols at their heads. The
4 officers apparently left, but returned to Plaintiff's house at
5 approximately 1:00 a.m. on Saturday, April 17, 2004. The
6 officers served Plaintiff with an arrest warrant, which Plaintiff
7 alleges was falsely obtained. The officers took Plaintiff into
8 custody and transported her to the central station. Plaintiff
9 was handcuffed and shackled as she was transported.

10 At the station, Plaintiff was booked, searched and put into
11 custody. When Plaintiff was searched, she was made to undress
12 completely. A female officer conducted the search and a male
13 officer was present during the search. Plaintiff was interviewed
14 by Defendant Merced Police Officer Ray Sterling, who was assisted
15 by Defendant Officer Dabney who is fluent in Spanish and
16 translated the interview. The interview was videotaped and
17 recorded. During the course of the interview, Plaintiff was
18 repeatedly told in Spanish that officers were going to kill her
19 son. Plaintiff was held in a single cell for approximately seven
20 days and "was not provided with adequate clothing, bedding, heat,
21 medical care and other required comforts of jail." Compl. ¶ 17.

22 Defendants requested bail be set for \$500,000 allegedly for
23 the puprose of keeping Plaintiff incarcerated for a longer period
24 of time. The purpose of this was to effectuate the apprehension
25 of Plaintiff's son.

26 On Wednesday, April 21, 2004, a criminal complaint was filed

1 against Plaintiff and she was taken before a court. The
2 arraignment began on April 21, 2004 and was continued to April
3 23, 2004. On April 23, 2004, Plaintiff was released on her own
4 recognizance. On July 8, 2004, the charge against Plaintiff was
5 dismissed for insufficient evidence.

6 **II. Procedural History**

7 Plaintiff filed her Complaint on December 30, 2004. The
8 Complaint purports to be based on diversity and names as
9 Defendants the City of Merced; the City of Merced Police
10 Department; City of Merced Police Officers Dabney, Scott Skinner,
11 and Ray Sterling; the County of Merced; the County of Merced
12 Sheriff's Department; City of Merced Police Officer Vernon
13 Warnke; the County of Merced District Attorney; and Bureau of
14 Narcotics Enforcement Agent Eloy Romero. The Complaint alleges
15 eight causes of action: assault by a peace officer, battery by a
16 peace officer, false arrest with a warrant by a peace officer,
17 unnecessary delay in processing and releasing Plaintiff,
18 malicious prosecution, abuse of process, intentional infliction
19 of emotional distress, and a 42 U.S.C. § 1983 claim for violation
20 of Plaintiff's civil rights.

21 The County of Merced Defendants ("Defendants"), which
22 include the County, the Sheriff's Department, Vernon Warnke and
23 the District Attorney's Office, have moved to dismiss based on
24 failure to state a claim, failure to comply with the California
25 Tort Claims Act and immunity. Defendants also move to strike
26 Plaintiff's claim for punitive damages.

1 **III. Plaintiff's Non-Opposition**

2 Plaintiff concedes that the claim for punitive damages is
3 barred by both state and federal law and should be stricken. See
4 Cal. Govt. Code § 818; Newport v. Fact Concerts, Inc., 453 U.S.
5 247, 259-260, 101 S. Ct. 2748, 69 L. Ed. 2d 616 (1981).

6 Plaintiff also concedes that the Complaint incorrectly
7 alleges that the Court's subject matter jurisdiction is based on
8 diversity, which is plainly lacking in this case. The Complaint
9 does, however, include a federal section 1983 claim providing
10 federal question jurisdiction. Although the form was improper,
11 it is apparent that the Court has subject matter jurisdiction
12 based on a federal question.

13 **IV. Legal Standard**

14 Dismissal of a complaint pursuant to Rule 12(b)(6) is proper
15 if "it appears beyond doubt that the plaintiff can prove no set
16 of facts in support of his claim which would entitle him to
17 relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2
18 L. Ed. 2d 80 (1957). In testing the sufficiency of a complaint
19 against a Rule 12(b)(6) challenge, a court must "accept all
20 material allegations in the complaint as true and construe them
21 in the light most favorable to the plaintiff." North Star Int'l
22 v. Arizona Corp. Comm'n, 720 F.2d 578, 580 (9th Cir. 1983). The
23 Court need not, however, "accept legal conclusions cast in the
24 form of factual allegations if those conclusions cannot
25 reasonably be drawn from the facts alleged." Clegg v. Cult
26 Awareness Network, 18 F.3d 752 (9th Cir. 1994).

1 A complaint may be dismissed as a matter of law if there is
2 a lack of a cognizable legal theory or if there are insufficient
3 facts alleged under a cognizable legal theory. Balistreri v.
4 Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). The
5 Court must determine whether or not it appears to a certainty
6 under existing law that no relief can be granted under any set of
7 facts that might be proved in support of a plaintiff's claims.
8 De La Cruz v. Tormey, 582 F.2d 45, 48 (9th Cir. 1978), *cert.*
9 *denied*, 441 U.S. 965, 99 S. Ct. 2416, 60 L. Ed. 2d 1072 (1979).

10 **V. Discussion**

11 **A. Failure to State a Claim - Generally**

12 Defendants argue that Plaintiff properly alleges the
13 existence of the County of Merced, the Merced Sheriff's
14 Department and the Merced District Attorney, but fails to allege
15 that any of the individual Defendants are employees of these
16 public entities. Defendants correctly point out that the
17 Complaint alleges that, with the exception of Agent Romero, all
18 the individual Defendants are allegedly employees of the City of
19 Merced. Defendants also take issue with Plaintiff's general
20 allegations against all Defendants, arguing that public entities,
21 being entities rather than individuals, cannot have committed the
22 acts against Plaintiff.

23 As to the federal claims, Plaintiff alleges failure to train
24 or supervise and that the civil rights violations were committed
25 in accordance with custom or policy. Compl. ¶¶ 51-52. This
26 allegation goes against the public entity defendants. As to the

1 state law claims, Plaintiff uses the language "Defendants, and
2 each of them" which Defendants argue is a "metaphysical
3 conundrum" because public entities, as entities, cannot be
4 individual actors. This argument, in addition to being
5 unsupported by any legal authority, fails to consider that, under
6 California law, a public entity may be vicariously liable for the
7 torts of its employees. See Cal. Govt. Code § 815.2(a).

8 Defendants are correct, however, that Plaintiff erroneously
9 alleges that Vernon Warnke is a City of Merced Police Officer
10 rather than a Sheriff's Deputy. This correction may be made in
11 an amended complaint. Accordingly, Defendants' motion to dismiss
12 is GRANTED as to the state law claims and DENIED on this basis as
13 to the federal claim. Plaintiff is granted leave to amend
14 consistent with this order.

15 **B. Section 1983 Claim¹**

16 Section 1983 provides an avenue of recovery for a person who
17 was deprived of a federally protected right by a person acting
18 under color of state law. 28 U.S.C. § 1983. Plaintiff's section
19 1983 claim is at least two claims and the Court has addressed
20 them separately.

21 **1. Fourth Amendment**

22 The use of excessive force by an officer in making an arrest
23

24 ¹ Defendants asserted that there was "no need to reach" the
25 issue of whether the Complaint states a claim against a public
26 entity under the standard set forth in Monell v. New York City
Dept. of Social Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d
806 (1986), so the Court will not address the issue at this time.

1 can support a claim under section 1983 based on a Fourth
2 Amendment violation. Graham v. Connor, 490 U.S. 386, 394, 109 S.
3 Ct. 1865, 104 L. Ed. 2d 443 (1989). The Fourth Amendment's
4 "objective reasonableness" standard is used to evaluate such
5 claims. Id. at 388.

6 Plaintiff alleges that the force used in completing her
7 arrest was excessive. Defendants argue that "a review of the
8 factual allegations surrounding her arrest reveals that
9 apparently no force whatsoever was used to effect it."

10 Although the Complaint does not specify which actors were
11 involved, it does allege that Plaintiff was held at gunpoint, was
12 "harmed," and required medical care. Compl. ¶¶ 13, 22, 55.
13 Plaintiff was also shackled as she was transported, which
14 conceivably could result in injury. Additionally, the facts
15 allege that Plaintiff was subjected to a strip search, which can
16 also form the basis of a section 1983 claim based on the Fourth
17 Amendment. See Fuller v. M.B. Jewelry, 950 F.2d 1437, 1445-46
18 (9th Cir. 1991).

19 Accordingly, viewing the facts alleged in the Complaint, as
20 the Court must, in the light most favorable to Plaintiff, there
21 are sufficient facts alleged for Plaintiff to state a section
22 1983 claim based on a Fourth Amendment violation. Defendants'
23 motion is DENIED and this claim may be included in an amended
24 complaint.

25 **2. Eighth Amendment**

26 Plaintiff alleges that the conditions of her confinement

1 exposed her to risk of harm and that she was deprived of medical
2 care while incarcerated.

3 The "Constitution does not mandate comfortable prisons, and
4 prisons . . . cannot be free of discomfort." Rhodes v. Chapman,
5 452 U.S. 337, 349, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981).

6 Nonetheless, conditions of confinement may amount to cruel and
7 unusual punishment in certain circumstances. Wilson v. Seiter,
8 501 U.S. 294, 304-05, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991).

9 Similarly, deliberate indifference to serious medical needs of
10 prisoners constitutes the "unnecessary and wanton infliction of
11 pain" proscribed by the Eighth Amendment. Estelle v. Gamble, 429
12 U.S. 97, 103-04, 97 S. Ct. 285 (1976) (citing Gregg v. Georgia,
13 428 U.S. 153, 173, 96 S. Ct. 2909)). Not every claim of physical
14 pain or anguish caused by medical conditions is actionable; an
15 inadvertent failure to provide medical care cannot be said to
16 constitute "an unnecessary and wanton infliction of pain" or to
17 be "repugnant to the conscience of mankind." Estelle, 429 U.S.
18 at 105-06.

19 In order to recover for a violation of the Eighth Amendment,
20 a plaintiff must demonstrate "more than ordinary lack of due care
21 for the prisoner's interests or safety." Whitley v. Albers, 475
22 U.S. 312, 319, 106 S. Ct. 1078, 89 L. Ed. 2d 251 (1986). She
23 must show that Defendants acted with "deliberate indifference."
24 Deliberate indifference is satisfied by a showing that the
25 defendants recklessly disregarded a substantial risk of harm to
26 the inmates health or safety and it requires a showing that the

1 official was subjectively aware of the risk and recklessly
2 disregarded it. Id. at 828-29.. Farmer v. Brennan, 511 U.S.
3 825, 828-29, 834-36, 114 S. Ct. 1970 (1994).

4 Defendants argue that "there are no factual allegations
5 which even remotely approach the deliberate indifference standard
6 required in order to find a Constitutional/Civil Rights
7 violation." Defs.' Mot. at 11.

8 There is no heightened pleading standard in Constitutional
9 tort cases. Galbraith v. County of Santa Clara, 307 F.3d 1119,
10 1127 (9th Cir. 2002). A plaintiff must demonstrate deliberate
11 indifference based on the facts in order to *recover* for a
12 violation of the Eighth Amendment. Such a showing is not
13 required to *plead* such a claim. The liberal notice pleading
14 standard set forth in Rule 8(a) of the Federal Rules of Civil
15 Procedure governs such claims.

16 The Complaint alleges that the "general conditions of
17 Plaintiff's confinement . . . exposed Plaintiff to a substantial
18 risk of serious harm Defendants knew of and disregarded by
19 failing to take reasonable measures to correct [them]." The
20 Complaint also alleges that while Plaintiff was confined in jail
21 she "was not provided with adequate clothing, bedding, heat,
22 medical care and other required comforts of jail." These
23 allegations are sufficient to notify Defendants of the basis for
24 Plaintiff's claim. Defendants' motion is DENIED and this claim
25 may be included in Plaintiff's amended complaint.

26 ///

C. Compliance with the California Tort Claims Act

Defendants argue that claims one, two, four, six and seven - all the state law claims except for false arrest and malicious prosecution - are barred because Plaintiff has failed to comply with the requirements of the California Tort Claims Act. The Complaint alleges that Plaintiff filed claims with both the City of Merced and the County of Merced and that these claims were rejected on October 22, 2004 and November 12, 2004, respectively. Defendants argue that the claim² that was filed was so lacking "in factual details that it fails to satisfy the Tort Claims Act for many of Plaintiff's asserted causes of action." Defs.' Mot. at 4. Defendants also argue that the claims against Defendant Warnke fail because the claims against his employer fail.

1. Standard for Claims Under the Tort Claims Act

Government Code section 945.4 prohibits suits against public entities until after a written claim for damages has been presented to the public entity and rejected. Cal. Govt. Code § 945.4. A claim must be timely filed and include the name of the claimant, the "date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted"

² Defendants attached certified copy of Plaintiff's two page claim to their motion and request that the Court take judicial notice of the filing. In certain cases a court may take judicial notice of facts outside the pleadings, such as "records and reports of administrative bodies," on motion to dismiss without converting the motion to one for summary judgment. Fed. R. Evid. 201(b); Mack v. South Bay Beer Distrib., Inc., 798 F.2d 1279, 1282 (9th Cir. 1986). Accordingly, the Court hereby takes judicial notice of the claim.

1 and provide "[a] general description of the . . . injury, damage
2 or loss incurred so far as it may be known at the time of
3 presentation of the claim." Id. at § 910. An amount must be
4 included if less than \$10,000 in damages is being claimed.

5 The California Supreme Court recently considered the purpose
6 of the claim requirement in determining whether a claim met with
7 the specificity required by section 910. In Stockett v.
8 Association of California Water Agengies Joint Power Insurance
9 Authority the court stated that:

10 The purpose of these statutes is to provide the public
11 entity sufficient information to enable it to
12 adequately investigate claims and to settle them, if
13 appropriate, without the expense of litigation.
14 Consequently, a claim need not contain the detail and
15 specificity required of a pleading, but need only
16 fairly describe what the entity is alleged to have
done. As the purpose of the claim is to give the
government entity notice sufficient for it to
investigate and evaluate the claim, not to eliminate
meritorious actions, the *claims statute should not be*
applied to snare the unwary where its purpose has been
satisfied.

17 34 Cal. 4th 441, 446 (2004) (quotations, citations omitted)
18 (emphasis added). The court also explained that while a claim
19 must allege all factual bases for recovery from the public
20 entity, it "need not specify each particular act or omission
21 later proven to have caused the injury." Id. at 447. If the
22 complaint shifts allegations to entirely different facts or
23 events, the claims requirement is not met, but if the complaint
24 "merely elaborates or adds further detail to a claim, but is
25 predicated on the same fundamental actions or failures to act by
26 the defendants, courts have generally found the claim fairly

1 reflects the facts pled in the complaint." Id.

2 Further, the claims act requirements should be "given a
3 liberal construction to permit full adjudication on the merits.
4 If the claim gives adequate information for the public entity to
5 investigate, additional detail and elaboration in the complaint
6 is permitted." Id. at 449 (quotations, citations omitted).

7 Unlike the case with public entities, a claim is not
8 required in order to maintain an action against a public employee
9 for injury resulting from an act or omission in the scope of the
10 public employee's employment. See Cal. Govt. Code § 950.
11 However, if an action against the employing public entity is
12 barred, so is an action against any employee thereof. Cal. Govt.
13 Code § 950.2.

14 **2. Application to Plaintiff's Claim**

15 The claim submitted to the County of Merced includes the
16 following (Plaintiff's response in italics):

17 6. Date of Accident/Incident/Loss: *April 17, 2004*

18 8. Provide your description of how the Accident/
19 Incident/Loss/Occurred: *This is a claim for the false*
20 *arrest, false imprisonment, and false criminal charges*
against claimant in violation of her state and federal
constitutional rights.

21 9. Describe the Damage/Injury/Loss being claimed: *The*
22 *violation of constitutional rights.*

23 The claim also specifies that the County of Merced, the Merced
24 Police Department and the District Attorney caused the damage,
25 indicates that there are no known witness and indicates no
26 medical professional treated Plaintiff for claimed injuries.

1 This claim is sufficient. It provided notice to the County
2 of the date of the loss and the factual gist of Plaintiff's
3 claim, that she was allegedly falsely arrested and taken to jail.
4 This would be enough information for the County to begin an
5 investigation and indeed the County apparently found it a
6 sufficient enough claim to warrant rejection.

7 Additionally, there is no material difference between the
8 facts alleged claim and the complaint. The Court acknowledges
9 that there are no real details in the claim, but the crucial
10 issue here is that the Complaint elaborates on the basic facts
11 alleged. Defendants' argument that Plaintiff's causes of action
12 differ does not change the fact that Plaintiff's claim and
13 Complaint are based on the same events. It is the factual and
14 not the legal basis that is the concern in the Claims Act
15 requirements. See Stockett, 34 Cal. 4th at 447. Defendants cite
16 no authority for the proposition that a plaintiff must assert
17 each and every conceivable legal cause of action within a
18 government claim.

19 Also, the claim form itself provides only four lines in
20 which to describe an incident and does not indicate that
21 additional pages may be attached. By its own form the County has
22 indicated that it needs only the minimum amount of information to
23 begin an investigation. This is especially relevant given that
24 Government Code section 910.4 provides that an entity "shall
25 provide forms specifying the information to be contained in
26 claims" and that a party "shall use the form" provided to be in

1 conformity with the statute. Accordingly, Plaintiff's state law
2 claims against the County public entities are not defeated by the
3 California Tort Claims Act.

4 As to Defendant Warnke, Plaintiff was not required to file a
5 claim against him under the Tort Claims Act. Because the claims
6 against his employing public entity (the County) are not barred,
7 the claims against him are likewise not barred.

8 Defendants' motion to dismiss Plaintiff's state law causes
9 of action for failure to comply with the Tort Claims Act is
10 DENIED.

11 **D. Immunity Issues**

12 **1. Claim Three - False Arrest**

13 Defendants argue that their actions are immune under both
14 section 43.55 of the California Civil Code and section 847 of the
15 California Penal Code. Section 43.55 of the California Civil
16 Code provides immunity for "any peace officer who makes an arrest
17 pursuant to a warrant of arrest regular upon its face if the
18 peace officer in making the arrest acts without malice and in the
19 reasonable belief that the person arrested is the one referred to
20 in the warrant." Cal. Govt. Code § 43.55. Similarly, section
21 847(b) of the California Penal Code provides that there may be no
22 civil liability or cause of action against a peace officer
23 "acting within the scope of his or her authority, for false
24 arrest or false imprisonment arising out of any arrest" if "the
25 arrest was lawful, or the peace officer, at the time of the
26 arrest, had reasonable cause to believe the arrest was lawful."

1 Cal. Penal Code § 847(b) .

2 However, as Defendants acknowledge, the immunity provided by
3 sections 43.55 and 847(b) is conditional. There is no immunity
4 if an officer acts on deliberately false information and executes
5 the warrant with malice or if the officer lacks reasonable cause
6 to believe the arrest was lawful.

7 Here, the Complaint alleges that Plaintiff was arrested
8 pursuant to a warrant but alleges that the warrant was "falsely
9 obtained." Compl. ¶ 11. The Complaint further alleges that
10 Defendants procured Plaintiff's arrest by "knowingly providing
11 false or materially incomplete information of a character that
12 could be expected to stimulate an arrest by knowingly,
13 oppressively, maliciously, despicably concealing true facts and
14 providing false facts to obtain a warrant." Compl. ¶ 35.

15 Defendants argue that these allegations are conclusory and
16 insufficient to withstand a motion to dismiss. Defendants cite
17 cases involving a criminal suppression hearing and an
18 administrative warrant for housing violations. These cases are
19 irrelevant to this civil case. To the extent Defendants argue
20 that the officer's belief was reasonable, it is inappropriate at
21 this juncture. Such an argument is one for summary judgment and
22 would require, at a minimum, evidence from the arresting
23 officer.³

24
25 ³ Defendants request that the Court take judicial notice of
26 the warrant for Plaintiff's arrest and the accompanying affidavit.
Rule 201(b)(2) of the Federal Rules of Evidence specifies that
judicial notice may only be taken of a fact that is "not subject to

Bearing in mind that the allegations in the Complaint are taken as true and that doubts are resolved in favor of Plaintiff, dismissal based on immunity is inappropriate at this time and Defendants' motion on this basis is DENIED.

2. Claim Five - Malicious Prosecution

Defendants argue that they are entitled to immunity from Plaintiff's state law claim for malicious prosecution under section 821.6 of the California Government Code⁴. Section 821.6 provides that "[a] public employee is not liable for injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment, even if he acts maliciously and without probable cause." Cal. Govt. Code § 821.6. Prosecutors are public employees within the meaning of the Government Code. Randle v. City and County of San Francisco, 186 Cal. App. 3d 449, 455-56 (1986). Section 821.6 "is not limited to the act of filing a criminal complaint. Instead, it also extends to actions taken in preparation for formal proceedings. Because investigation is 'an essential step' toward the institution of formal proceedings, it 'is also cloaked

reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Given that Plaintiff argues that her arrest was based on false information, there is a dispute as to whether the "facts" stated in the affidavit are true. Accordingly, Defendants' request for judicial notice is denied.

⁴ Defendants fail to note that at least one federal court has held that section 821.6 also shields parties such as Defendants here for intentional infliction of emotional distress, Plaintiff's seventh cause of action. See Crowe v. County of San Diego, 303 F. Supp. 2d 1050, 1085-86 (S.D. Cal. 2004).

1 with immunity.'" Amylou R. v. County of Riverside, 28 Cal. App.
2 4th 1205, 1209-10 (1994).

3 Under section 815.2, a public entity is not liable for
4 injury resulting from an act or omission of an employee of the
5 public entity if the employee is immune. Cal. Govt. Code §
6 815.2. This immunity could potentially absolve all Defendants
7 involved in this motion of liability on the state law malicious
8 prosecution claim.

9 In her opposition Plaintiff argues that immunity does not
10 apply because the acts of Defendants were outside the scope of
11 their employment. Defendants point out in response that the
12 Complaint alleges that "Individual Defendants Scott Skinner,
13 Officer Dabney, Ray Sterling and Vernon Warnke are City of Merced
14 Officers acting within the *coarse [sic] and scope of their*
15 *government employment . . .*" Compl. ¶ 4 (emphasis added). The
16 Complaint does not allege that either the district attorney or
17 any representative of the County of Merced was acting outside the
18 scope of his or her employment in prosecuting or investigating
19 this case.

20 Accordingly, Defendants motion to dismiss Plaintiff's state
21 law malicious prosecution claim is GRANTED. Plaintiff is given
22 leave to amend this claim, however an amendment will only be
23 successful if Plaintiff alleges facts indicating that Defendants
24 were acting outside the scope of their employment. Plaintiff is
25 reminded that Rule 11 of the Federal Rules of Civil Procedure
26 will apply to any amended pleading.

E. Failure to State a Claim- Claim Four - Delay

Plaintiff alleges that the delay she experienced between being arrested and being taken before a court was undue. Plaintiff was arrested on April 17, 2004. The criminal complaint⁵ was filed on April 21, 2004 and Plaintiff was brought to court for arraignment on the same day. Plaintiff was released from custody on her own recognizance on April 23, 2004.

Defendants argue that the forty-eight hour rule for probable cause determination that applies in cases in which a person was arrested without a warrant is inapplicable here and that the delay in this case was acceptable. Defendants further argue that Plaintiff's allegation that the officers were holding her in jail in an effort to expedite her son's arrest is irrelevant because the arrest was valid.

Defendants are incorrect on the law. Section 821 of the California Penal Code provides that if a person is arrested pursuant to a warrant, the arresting officer must "take the defendant before the magistrate who issued the warrant or some other magistrate of the same county." Cal. Pen. Code § 821. Section 825 further specifies that the "defendant shall in all cases be taken before the magistrate without unnecessary delay, and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays." Cal. Pen. Code § 825(a)(1).

⁵ At Defendants' request, the Court hereby takes judicial notice, as public records, of the certified copies of the criminal complaint and minute orders issued in Plaintiff's prosecution.

1 As the statute has been interpreted, it appears from the
2 facts alleged that Plaintiff was probably brought before a
3 magistrate within 48 hours. Plaintiff was arrested in the early
4 morning hours of Saturday, April 17, 2004. Saturday and Sunday
5 would be excluded. The 48 hour period would begin in the early
6 morning hours of Monday, April 19, 2004. Early morning Tuesday
7 would be 24 hours and the time period would run out in the early
8 morning hours of Wednesday, April 21. Because the courts would
9 not be open at that time, the appearance on Wednesday morning
10 would be in compliance with section 825.

11 That said, it appears to the Court that the statute does not
12 provide a blanket authorization for a delay in all cases. The
13 California Supreme Court has explained that section 825 "does not
14 authorize a two-day^[6] detention in all cases but, instead, places
15 a limit upon what may be considered a necessary delay, and a
16 detention of less than two-days, if unreasonable under the
17 circumstances, is in violation of the statute." Dragna v. White,
18 45 Cal. 2d 469, 473 (1955). "Where the arrest is lawful,
19 subsequent unreasonable delay in taking the person before a
20 magistrate will not affect the legality of the arrest, although
21 it will subject the offending person to liability for so much of
22 the imprisonment as occurs after the period of necessary or
23 reasonable delay." Id. California courts have held that the
24

25 ⁶ [The time limit was changed from two days to 48 hours in
26 1995, however even prior to the amendment courts often applied a 48
hour standard, so the case law remains on point.]

1 only permissible delay is that necessary to "complete the arrest;
2 to book the accused; to transport the accused to court; for the
3 district attorney to evaluate the evidence for the limited
4 purpose of determining what charge, if any, is to be filed; and
5 to complete the necessary clerical and administrative tasks to
6 prepare a formal pleading." Youngblood v. Gates, 200 Cal. App.
7 3d 1302, 1319 (1988) (quoting People v. Williams, 68 Cal. App. 3d
8 36, 43 (1977)).

9 Plaintiff alleges that Defendants intended to induce
10 Plaintiff's son to surrender by retaining custody of Plaintiff.
11 This is a sufficient allegation of unreasonable delay to state a
12 claim, particularly in light of the two full business days
13 between when Plaintiff was placed in custody and when she was
14 arraigned. Accordingly, Defendants' motion to dismiss claim four
15 on this basis is DENIED.

16 **ACCORDINGLY**, Defendants' motion to dismiss is GRANTED IN
17 PART and Plaintiff's state law claims are DISMISSED WITH LEAVE TO
18 AMEND.

19 **FURTHER**, Defendants' motion to dismiss is DENIED IN PART as
20 to Plaintiff's federal Claims.

21 **FURTHER**, Plaintiff's claim for punitive damages is STRICKEN.

22 ///

23 ///

24 ///

25 ///

26 ///

1 **FURTHER**, Plaintiff is granted leave to file a first amended
2 complaint consistent with this order. Such pleading shall
3 contain a proper jurisdictional allegation.
4

5 IT IS SO ORDERED.

6 **Dated: May 13, 2005**
7 ia40ij

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE